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October 22, 2002

VIA EMAIL AND HAND DELIVERY

The Honorable Kathleen A. Sheehy
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, MN 55401

Re: Reply Comment Regarding Proposed Amendments to
Power Plant Siting Rules: Minnesota Rules Chapter 4400
OAH Docket No. 58-2901-15002-1

Dear Judge Sheehy:

We are in receipt of the "EQB Staff's Response to Comments Filed on Chapter 4400 Amendments" dated October 18, 2002. In the conclusion section, Mr. Mitchell claims that the EQB staff "has responded to every single comment that was submitted to the judge." However, the EQB Staff has not responded to the issues we raised in our October 15th comment concerning landowner notification under local review (proposed Rule 4400.5000) in any meaningful way.

The EQB Staff commented (p. 14) that "the agency should minimize the requirements the state rules impose on local officials," but, as we pointed out on page 5 of our October 15th comment, the Legislature did not impose **any** notice requirements on governmental units—it imposed notice requirements on the applicants for large energy facilities.

The EQB Staff acknowledges this distinction in its Reply Comment (p. 14) when it states that "it is appropriate to require applicants to notify the state that they have elected to proceed locally and to notify those persons who have gone to the effort of placing their names on the EQB [mailing] list that will be used to advise people of all proposed large energy facilities . . ." However, the EQB Reply Comment makes no attempt whatsoever to explain why applicants should have any opportunity to avoid direct mailed notice to landowners under local review, nor does it recognize that potentially affected landowners would certainly "*go to the effort*" of placing their names on a mailing list if they had any knowledge that their private property interests were at stake in a regulatory proceeding! Is the EQB Staff implying that it would be acceptable for local governmental units to decline direct mailed notice to affected landowners as set forth in the statute?

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The 2001 Legislature recognized that landowners are entitled to direct notification when their property interests are at stake in a regulatory proceeding to route high voltage transmission lines on private lands. Applicants must not be given any opportunity to circumvent the Legislature's clear mandate to notify affected citizens merely by electing to proceed under local—rather than state—siting authority.

The EQB Staff's rationale is untenable. EQB Staff notes that "the local unit of government *would be well advised* to ensure that the public is aware of a proposed project" (p. 14), but it provides no direction in the Rule language. (Furthermore, the interests of the "public" are markedly different from the interests of landowners upon whose property an applicant is proposing to construct large energy facilities.) By amending proposed Rule 4400.5000 to include the same notice requirements set forth in the new proposed Rule 4400.1350, the State will provide clear guidance to both applicants and local governmental units concerning landowner notification in transmission line proceedings. An additional benefit of standardized notice procedures is that each local governmental unit is relieved of the burden of formulating separate notice policies. Failing to include the new 4400.1350 notice requirements for local review will establish a gigantic loophole in the Legislature's landowner notification obligation, and could serve to cheat affected citizens out of their Constitutional right to receive direct notice of regulatory proceedings that involve their legal interests. Frankly, the EQB Staff's advocacy of this glaring loophole is quite disturbing.

The EQB Staff has not addressed the concerns we outlined in our October 15, 2002 comment, and has offered no legitimate reason why applicants should not be required to directly notify landowners when they propose construction of high voltage transmission lines on privately-owned lands—regardless of the venue under which such authority is pursued. Judge Sheehy, we respectfully request that you carefully consider our October 15th comment, and that you recommend inclusion of the EQB's amended Rule 4400.1350 notice requirements in Rule 4400.5000. These requirements will ensure that potentially affected citizens receive direct notice of regulatory proceedings in which the legal authority to take private lands is sought, in keeping with the Legislature's directive.

Respectfully,

Laura A. Reinhardt

John C. Reinhardt

cc: Alan Mitchell (by email and U.S. mail)
Manager, Power Plant Siting
MN Environmental Quality Board